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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,527	04/02/2001	Kirk Johnson	2762.2006-002	1065
21005 7590 08/03/2010 HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133				
EXAMINER BRUCKART, BENJAMIN R				
ART UNIT		PAPER NUMBER		
2446				
MAIL DATE		DELIVERY MODE		
08/03/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/824,527

Applicant(s)

JOHNSON, KIRK

Examiner

BENJAMIN R. BRUCKART

Art Unit

2446

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7, 9, 11-18, 20-24, 26, 28-41, 43-46, 48, 50, 51, 61-82 and 84-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-7, 9, 11-18, 20-24, 26, 28-39, 45-46, 48, 50, 51, 61-66, 69-82 and 84-86, 88-90 is/are allowed.
- 6) ☒ Claim(s) 40, 41, 43, 44, 67, 68 and 87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-840)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Claims 2-7, 9, 11-18, 20-24, 26, 28-41, 43-46, 48, 50, 51, 61-82 and 84-90 are pending in this Office Action.

Drawings

The drawings are objected to as being sloppy, unclean and illegible hand written drawings. Appropriate correction is required.

Allowable Subject Matter

Claims 2-7, 9, 11-18, 20-24, 26, 28-39, 45-46, 48, 50, 51, 61-66, 69-82 and 84-86, 88-90 are allowable over the prior art because they include the limitations of previously objected claims.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 40-41, 43-44, 67-68, 87 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The computer program product is embodied on a computer readable medium. Said medium is interpreted to include non-statutory subject matter such as carrier waves, signals, and communication media because carrier waves, signals, and communication media store data within the wave, signal or media. While the specification lists examples "such as" on page 13, 1st paragraph of physical media, those are considered to be just non-limiting examples. The examiner encourages applicant to amend the

claims and specification with explicit arguments that the medium is 'non-transitory' or 'non-transmissible.'

Remarks

Attempts to contact the applicant were unsuccessful in order to expedite prosecution.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN R. BRUCKART whose telephone number is (571)272-3982. The examiner can normally be reached on 9:00-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C. Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin R Bruckart
Primary Examiner
Art Unit 2446

Application/Control Number: 09/824,527
Art Unit: 2446

Page 4

/Benjamin R Bruckart/
Primary Examiner, Art Unit 2446